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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FILED

MAY - 8 2019

KATE BRYKMAN, Clerk
By _____ Dep. Clerk

ORIGINAL

UNITED STATES OF AMERICA

CRIMINAL DOCKET FOR CASE
NO. 2-18-CR-00100-PTB-1

-VS-

MICHAEL ROHANA

PHILADELPHIA, PA.
APRIL 9, 2019

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TRIAL - DAY 7

APPEARANCES:

FOR THE GOVERNMENT: U.S. ATTORNEY'S OFFICE
BY: K.T. NEWTON, AUSA
615 CHESTNUT STREET, SUITE 1250
PHILADELPHIA, PA 19106

LYNN MCCLOSKEY, RPR
OFFICIAL COURT REPORTER
1234 US COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106
(856) 649-4774

1 APPEARANCES (CONT.)

2 FOR THE DEFENDANT: FEDERAL COMMUNITY DEFENDER
3 BY: CATHERINE C. HENRY, ESQUIRE
4 AND
5 NANCY MACEOIN, ESQUIRE
6 OFFICE - EDPA
7 SUITE 540W
8 THE CURTIS CENTER
9 601 WALNUT STREET
10 PHILADELPHIA, PA 19106
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1 (CLERK OPENS COURT.)

2 THE COURT: GOOD AFTERNOON.

3 ALL COUNSEL: GOOD AFTERNOON, YOUR HONOR.

4 THE COURT: YOU MAY BE SEATED.

5 I BELIEVE THE JURY HAS NOT CHANGED. THEY
6 ARE DEADLOCKED.

7 WHAT I AM GOING TO DO AT THIS POINT IS TO
8 ADDRESS THEM AND SEND THEM BACK. I WOULD RECOMMEND THAT
9 THE ATTORNEYS THINK ABOUT HOW LONG YOU WANT TO KEEP THE
10 JURORS TO DELIBERATE. BUT IN THE INTERIM, I WILL JUST
11 INSTRUCT THEM THAT THEY SHOULD CONTINUE DELIBERATIONS.

12 OKAY. KIM.

13 (JURY IN.)

14 THE COURT: OKAY, YOU MAY BE SEATED.

15 MEMBERS OF THE JURY, I REALIZE THAT YOU
16 ARE HAVING SOME DIFFICULTY REACHING A UNANIMOUS
17 AGREEMENT, BUT THAT IS NOT UNUSUAL. AND OFTEN AFTER
18 FURTHER DISCUSSIONS JURORS ARE ABLE TO WORK OUT THEIR
19 DIFFERENCES AND AGREE.

20 IT IS YOUR DUTY, AS JURORS, TO CONSULT
21 WITH ONE ANOTHER AND TO DELIBERATE WITH A VIEW TO
22 REACHING AN AGREEMENT IF YOU CAN DO SO WITHOUT VIOLENCE
23 TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE
24 CASE FOR YOURSELF, BUT DO SO ONLY AFTER IMPARTIAL
25 CONSIDERATION OF THE EVIDENCE IN THIS CASE WITH YOUR

1 FELLOW JURORS.

2 IN THE COURSE OF YOUR DELIBERATIONS, DO
3 NOT HESITATE TO REEXAMINE YOUR OWN VIEWS AND CHANGE YOUR
4 OPINION IF CONVINCED IT IS ERRONEOUS. BUT DO NOT
5 SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR THE
6 EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF
7 YOUR FELLOW JURORS OR FOR THE MERE PURPOSE OF RETURNING
8 A VERDICT. LISTEN CAREFULLY TO WHAT THE OTHER JURORS
9 HAVE TO SAY, AND THEN DECIDE FOR YOURSELF IF THE
10 GOVERNMENT HAS PROVEN THE DEFENDANT GUILTY BEYOND A
11 REASONABLE DOUBT.

12 WHAT I HAVE JUST SAID IS NOT MEANT TO
13 RUSH OR PRESSURE YOU INTO AGREEING TO A VERDICT. TAKE
14 AS MUCH TIME AS YOU NEED TO DISCUSS THINGS. THERE IS NO
15 HURRY.

16 WITH THAT INSTRUCTION, I WILL RETURN YOU
17 TO THE JURY ROOM.

18 (JURY OUT.)

19 THE COURT: OKAY. WE ARE IN RECESS.

20 (JURY CONTINUES TO DELIBERATE.)

21 THE COURT: OKAY, YOU MAY BE SEATED.

22 THE JURY HAS INDICATED THAT THEY ARE
23 UNABLE TO REACH A VERDICT, SO IT'S UP TO COUNSEL WHERE
24 WE GO FROM HERE.

25 MS. NEWTON: YOUR HONOR, GIVEN THE JURY

1 HAS BEEN TELLING US, I THINK, ALL OF TODAY THAT THEY ARE
2 UNABLE TO REACH A VERDICT, IT DOES NOT SOUND LIKE THAT
3 HAS CHANGED. THE GOVERNMENT BELIEVES WE SHOULD NOT ASK
4 THEM TO DELIBERATE ANY LONGER.

5 MS. HENRY: MAY WE JUST HAVE A MOMENT,
6 YOUR HONOR?

7 THE COURT: YES.

8 (BRIEF PAUSE IN THE PROCEEDING.)

9 MS. NEWTON: YOUR HONOR, PERHAPS I SHOULD
10 NOT HAVE SAID THAT.

11 MS. HENRY: YOUR HONOR, IS THERE -- I
12 KNOW THAT YOU CAN DO WHATEVER YOU WANT, BUT IS THERE
13 SOMETHING THAT YOU CAN ASK IF THERE IS ANYTHING IN
14 PARTICULAR THAT WOULD HELP THEM? I MEAN, WE ARE CLOSE
15 TO THE END OF THE DAY, BUT IF THERE IS ANYTHING IN
16 PARTICULAR OR ANY FURTHER INSTRUCTION OR ANY -- I DON'T
17 KNOW WHAT, I CANNOT THINK OF ANYTHING, BUT ANYTHING
18 SPECIFIC THAT WOULD BE HELPFUL. I DON'T KNOW.

19 THE COURT: WELL, IT SEEMS TO ME THAT
20 WHAT THE JURORS HAVE INDICATED IS THAT THERE IS NO WAY
21 THAT THEY ARE GOING TO COME TO AN AGREEMENT. I CAN POLL
22 THEM, BUT THAT WOULD REVEAL INFORMATION THAT DOES NOT
23 NEED TO BE REVEALED. I CAN ASK THE FOREPERSON IF IN HER
24 OPINION SHE FEELS THAT FURTHER DELIBERATIONS WOULD BE
25 FRUITFUL OR MERITLESS.

1 MS. HENRY: OKAY.

2 MS. MACEOIN: I THINK THAT'S A GOOD
3 SOLUTION, YOUR HONOR.

4 MS. NEWTON: NO OBJECTION TO THAT, YOUR
5 HONOR.

6 THE COURT: OKAY.

7 (JURY IN.)

8 THE COURT: YOU MAY BE SEATED.

9 MADAM FOREPERSON, CAN YOU PLEASE STAND.
10 YOU HAVE TOLD MY COURT OFFICER THAT YOU
11 DO NOT THINK THAT YOU, THE JURY, WILL AGREE ON A
12 UNANIMOUS VERDICT, IS THAT CORRECT?

13 THE FOREPERSON: THAT'S CORRECT.

14 THE COURT: DO YOU THINK THAT THERE IS
15 ANY POSSIBILITY THAT CONTINUED DELIBERATIONS WOULD
16 CHANGE THAT SITUATION?

17 THE FOREPERSON: I DO NOT.

18 THE COURT: IS THERE ANYTHING THAT THIS
19 COURT COULD DO THAT WOULD IMPACT OR CAUSE THE SITUATION
20 TO CHANGE?

21 THE FOREPERSON: NO.

22 THE COURT: I'M GOING TO HAVE SOME
23 DISCUSSION WITH COUNSEL, SO I AM GOING TO SEND YOU BACK
24 TO THE JURY ROOM AND WE WILL CALL UPON YOU SHORTLY.

25 (JURY OUT.)

1 THE COURT: LET ME SEE COUNSEL AT
2 SIDEBAR.

3 (SIDEBAR DISCUSSION OCCURRED.)

4 THE COURT: I AM OPEN TO SUGGESTIONS.

5 MS. NEWTON: YOUR HONOR, FOR THE RECORD,
6 I WITHDRAW MY EARLIER SUGGESTION AS I SHOULD NOT HAVE
7 SAID THAT.

8 MS. HENRY: I DIDN'T KNOW THAT WAS --
9 OKAY. GOT IT.

10 MS. MACEOIN: I DON'T KNOW WHAT --

11 MS. HENRY: CAN YOU THINK OF ANYTHING?

12 THE COURT: I CAN'T THINK OF ANYTHING WE
13 CAN DO. THE ONLY ISSUE IS WHETHER OR NOT YOU THINK THEY
14 HAVE BEEN DELIBERATING LONG ENOUGH.

15 MS. MACEOIN: IT'S HARD TO SAY. THEY ARE
16 GOING TO HATE US IF WE MAKE THEM COME BACK, BUT THAT'S
17 NOT -- IT'S BEYOND OUR CONTROL.

18 MS. HENRY: I MEAN WE HAVE NOT BEEN --
19 WHEN KIM HAS COME OUT AND YOU HAVE TOLD US THAT -- I
20 MEAN, HAS THAT BEEN, LIKE, A CONSISTENT THING, THAT THEY
21 HAVE BEEN SAYING THAT THEY ARE STUCK?

22 THE COURT: YESTERDAY THEY SAID THEY WERE
23 STUCK.

24 MS. HENRY: I REMEMBER THAT YESTERDAY,
25 AND NOW TODAY THEY ARE STUCK.

1 THE COURT: THEY ARE STUCK. THEY SAID,
2 THERE IS NO WAY IN HELL THAT WE ARE GOING TO COME TO A
3 UNANIMOUS VERDICT.

4 MS. MACEOIN: INTERESTING.

5 MS. HENRY: THAT'S STUCK.

6 THE COURT: I DIDN'T WANT TO SAY THAT IN
7 OPEN COURT, BUT THAT SHOULD BE ON THE RECORD.

8 MS. MACEOIN: I AM AT A LOSS ABOUT WHAT
9 ELSE TO DO, YOUR HONOR. I MEAN, IT'S CURIOUS BECAUSE
10 THEY DID ASK FOR MORE EXHIBITS.

11 MS. HENRY: WHICH SEEMS THAT THEY ARE
12 LIKE -- YOU THINK THAT SOME PROGRESS IS MAYBE BEING
13 MADE, BUT MAYBE NOT.

14 MS. NEWTON: IT DIDN'T SOUND -- AT LEAST
15 FROM WHAT THE FOREPERSON SAID, IT SOUNDED LIKE THERE WAS
16 NO ADDITIONAL PROGRESS WITH THE ADDITIONAL EXHIBITS OR
17 ANSWERS, BUT...

18 THE COURT: WE CAN GIVE IT ONE MORE DAY.

19 MS. MACEOIN: I DON'T KNOW.

20 MS. HENRY: WHAT DO YOU THINK?

21 MS. MACEOIN: I MEAN --

22 MS. HENRY: LET US THINK FOR A SECOND,
23 JUDGE.

24 (BRIEF PAUSE THIS THE PROCEEDING.)

25 THE COURT: THEY HAVE BEEN DELIBERATING

1 HOW LONG?

2 MS. HENRY: SINCE 11 O'CLOCK YESTERDAY.

3 THE COURT: SO THEY HAVE BEEN

4 DELIBERATING TEN HOURS, AT LEAST. THE CASE TOOK A WEEK
5 TO TRY.

6 MS. NEWTON: SLIGHTLY LESS THAN THAT. WE
7 HAD TO FINISH EARLY, I THINK, THE FIRST DAY WITH THE
8 COMPUTER GLITCH.

9 MS. MACEOIN: AND FRIDAY.

10 MS. NEWTON: THAT'S TRUE, WE ENDED EARLY
11 ON FRIDAY.

12 THE COURT: SO TEN HOURS. THEY CAN GO
13 BACK AND THEY CAN CONTINUE, UNLESS THERE IS A MOTION TO
14 BE MADE HERE.

15 MS. MACEOIN: I DON'T HAVE A MOTION.

16 MS. HENRY: I MEAN, WE CAN WAIT UNTIL
17 4:00 OR WHATEVER, I GUESS.

18 THE COURT: WE WILL WAIT UNTIL 4:30.

19 MS. HENRY: LET'S DO THAT. DOES THAT
20 SOUND GOOD? AND THEN WE WILL CALL IT A DAY.

21 THE COURT: CALL IT A DAY OR CALL IT A
22 CASE.

23 MS. HENRY: I GUESS CALL IT A CASE.

24 MS. MACEOIN: YOUR HONOR, JUST SO YOU
25 KNOW, I HAVE TO CATCH A FLIGHT, SO I WILL BE LEAVING.

1 OF COURSE I TRUST MS. HENRY HERE TO MAKE THE APPROPRIATE
2 DECISIONS. SO I APOLOGIZE FOR HAVING TO LEAVE BEFORE WE
3 REACH A VERDICT.

4 THE COURT: I AM SORRY YOU ARE, TOO.

5 MS. MACEOIN: BELIEVE ME, I AM, TOO.

6 THE COURT: ALL RIGHT, WE ARE IN RECESS.

7 (JURY CONTINUES TO DELIBERATE.)

8 THE COURT: OKAY, YOU MAY BE SEATED.

9 COUNSEL, BEFORE WE BRING THE JURY IN, I
10 WOULD LIKE TO HAVE ON THE RECORD BOTH DEFENSE COUNSEL
11 AND THE GOVERNMENT'S POSITION IN REGARDS TO A MISTRIAL.

12 FIRST THE DEFENSE.

13 MS. HENRY: YOUR HONOR, I AGREE WITH THE
14 DECISION TO LET THE JURY GO AT THIS POINT AND HAVE THE
15 CASE END IN A MISTRIAL.

16 MS. NEWTON: YOUR HONOR, THE GOVERNMENT
17 HAS NO OBJECTION TO THAT.

18 THE COURT: OKAY. I AM GOING TO BRING
19 THE JURORS OUT.

20 MS. HENRY: WE WOULD ASK IF WE CAN HAVE
21 PERMISSION TO SPEAK TO THE JURY AFTERWARDS.

22 THE COURT: IF THEY WISH TO SPEAK TO YOU.

23 MS. HENRY: OKAY.

24 THE COURT: I AM GOING TO BRING THEM OUT
25 AND QUESTION THEM INDIVIDUALLY.

1 MS. HENRY: OKAY.

2 THE COURT: OKAY, KIM.

3 (JURY IN.)

4 THE COURT: OKAY, YOU MAY BE SEATED.

5 KIM IS GOING TO QUESTION YOU INDIVIDUALLY
6 FOR THE RECORD.

7 THE DEPUTY CLERK: JUROR NUMBER 1, PLEASE
8 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK
9 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

10 JUROR NO. 1: I DO.

11 THE DEPUTY CLERK: JUROR NUMBER 2, PLEASE
12 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK
13 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

14 JUROR NO. 2: I DO.

15 THE DEPUTY CLERK: THANK YOU.

16 JUROR NUMBER 3, PLEASE RISE. DO YOU
17 AGREE THAT THERE IS A HOPELESS DEADLOCK WHICH CANNOT BE
18 RESOLVED BY FURTHER DELIBERATIONS?

19 JUROR NO. 3: I DO.

20 THE DEPUTY CLERK: JUROR NUMBER 4, PLEASE
21 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK
22 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

23 JUROR NO. 4: YES, I DO.

24 THE DEPUTY CLERK: JUROR NUMBER 5, PLEASE
25 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK

1 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

2 JUROR NO. 5: I DO.

3 THE DEPUTY CLERK: JUROR NUMBER 6, PLEASE
4 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK
5 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

6 JUROR NO. 6: I DO.

7 THE DEPUTY CLERK: THANK YOU.

8 JUROR NUMBER 7, PLEASE RISE. DO YOU
9 AGREE THAT THERE IS A HOPELESS DEADLOCK WHICH CANNOT BE
10 RESOLVED BY FURTHER DELIBERATIONS?

11 JUROR NO. 7: I DO.

12 THE DEPUTY CLERK: JUROR NUMBER 8, PLEASE
13 RISE. DO YOU AGREE THAT THERE IS A HOPELESS DEADLOCK
14 WHICH CANNOT BE RESOLVED BY FURTHER DELIBERATIONS?

15 JUROR NO. 8: I DO.

16 THE DEPUTY CLERK: THANK YOU.

17 JUROR NUMBER 9, PLEASE RISE. DO YOU
18 AGREE THAT THERE IS A HOPELESS DEADLOCK WHICH CANNOT BE
19 RESOLVED BY FURTHER DELIBERATIONS?

20 JUROR NO. 9: I DO.

21 THE DEPUTY CLERK: JUROR NUMBER 10,
22 PLEASE RISE. DO YOU AGREE THAT THERE IS A HOPELESS
23 DEADLOCK WHICH CANNOT BE RESOLVED BY FURTHER
24 DELIBERATIONS?

25 JUROR NO. 10: I DO.

1 THE DEPUTY CLERK: JUROR NUMBER 11,
2 PLEASE RISE. DO YOU AGREE THAT THERE IS A HOPELESS
3 DEADLOCK WHICH CANNOT BE RESOLVED BY FURTHER
4 DELIBERATIONS?

5 JUROR NO. 11: I DO.

6 THE DEPUTY CLERK: JUROR NUMBER 12,
7 PLEASE RISE. DO YOU AGREE THAT THERE IS A HOPELESS
8 DEADLOCK WHICH CANNOT BE RESOLVED BY FURTHER
9 DELIBERATIONS?

10 JUROR NO. 12: I DO.

11 THE DEPUTY CLERK: THANK YOU.

12 THE COURT: THIS COURT CONCLUDES THAT A
13 MISTRIAL IS NECESSARY. I WILL DISCHARGE YOU, LADIES AND
14 GENTLEMEN. I WOULD LIKE TO THANK YOU FOR YOUR SERVICE
15 AS JURORS. I HOPE IT HAS BEEN AN INTERESTING EXPERIENCE
16 FOR YOU, BUT I HOPE THAT YOU HAVE LEARNED THAT OUR
17 SYSTEM CANNOT OPERATE UNLESS WE HAVE PEOPLE THAT ARE
18 WILLING TO TAKE TIME FROM THEIR SCHEDULES TO SERVE AS
19 JURORS IN THESE CASES. AGAIN, I WOULD LIKE TO THANK YOU
20 FOR YOUR SERVICE.

21 YOU ARE EXCUSED.

22 (JURY OUT.)

23 THE COURT: OKAY. SO A MISTRIAL HAVING
24 BEEN DECLARED, THIS CASE IS IN SUSPENSE UNTIL THE
25 GOVERNMENT DECIDES WHETHER OR NOT THEY WANT TO TRY THE

1 DEFENDANT AGAIN.

2 MS. NEWTON: YES, YOUR HONOR, WE WILL
3 INFORM THE COURT.

4 THE COURT: DO YOU WANT US TO GIVE YOU A
5 DATE?

6 MS. NEWTON: DO WE WANT A DATE --

7 THE COURT: FOR STATUS.

8 MS. NEWTON: CERTAINLY, YOUR HONOR.

9 THE COURT: WE WILL GIVE IT A 30-DAY
10 DATE.

11 MS. NEWTON: THANK YOU, YOUR HONOR.

12 THE COURT: CAN WE HAVE A DATE, KIM?

13 THE DEPUTY CLERK: MAY 15TH.

14 THE COURT: MAY 15TH.

15 THE DEPUTY CLERK: MAY 15TH.

16 THE DEPUTY CLERK: WHAT TIME?

17 THE COURT: 10 O'CLOCK.

18 THE DEPUTY CLERK: MAY 15TH AT

19 10 O'CLOCK.

20 ALL COUNSEL: THANK YOU.

21 THE COURT: OKAY, THANK YOU.

22 (COURT ADJOURNED.)

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I CERTIFY THAT THE

FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

4/9/19
DATE


OFFICIAL COURT REPORTER
LYNN MCCLOSKEY, RPR

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